

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARK CHAVEZ,

Plaintiff,

v.

CIV No. 13-1047 JAP/SCY

ANDREW CHAVEZ *et al.*

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO ALLOW RULE 35
EXAMINATION**

Before the Court is Plaintiff's Motion to Compel Production of Documents ("Motion"). *Doc. 42*. Having reviewed the Motion and accompanying briefing and being fully advised, the Court finds the following:

I. BACKGROUND

Plaintiff Mark Chavez is the former Facilities Manager for Defendant Espanola School District ("ESD"). He brings this action against Defendants, alleging that during the term of his employment with ESD, he was subjected to harassment and threats in violation of his First Amendment rights and the New Mexico Whistleblowers Protection Act because he failed to participate in Defendants' alleged political cronyism. *See generally doc. 59* (First Amended Complaint).

Plaintiff has requested several different types of documents from Defendants, including minutes to various ESD committee minute meetings, construction contracts and bids, and employment contracts. *Doc. 42 Ex. 1*. Defendants initially responded on April 1, 2014 (see *doc. 20, doc. 42 Ex. 1*). On April 11, 2014, Defendants provided

supplemental responses to RFPs 21, 22, 26, 28, 30, 38 and 39. *Doc. 29, doc. 42 Ex. 2.* On April 15, 2014 Defendants provided further supplemental responses to RFPs 18 and 19. *Doc. 30, doc. 42 Ex. 3.* On May 7, 2014, Plaintiff's counsel emailed Defendants' counsel requesting, among other items, further responses to RFPs 3, 5(a), 7, 10, 15, 18, 21, 22, 26, 28, and 30. *Doc. 42, Ex. 4.* In a letter dated May 28, 2014, Defendants responded to Plaintiff's request representing that for each request they had either produced the responsive documents in their possession or that they were making further efforts to locate responsive documents and would supplement their responses as necessary. *Doc. 42, Exs. 5-6.*

In this Motion, Plaintiff alleges that Defendants have failed to appropriately respond to numerous requests for production of documents (RFPs) served on February 24, 2014 (*doc. 20*) that would reveal their improper conduct with regard to the recruitment of contracts, and employment practices, in the Espanola School District. *Doc. 42 at 2.* Defendants respond that they have attempted to satisfy these requests through initial and supplemental responses on April 1, 11, and 15, 2014, as well as retaining a data recovery expert to ensure all responsive documents are located. *Doc. 55 at 2-4.*

II. ANALYSIS

As to each of the RFPs at issue, 2-5, 7, 9, 10, 15, 16, 21-23, 26, 28, 30, 34, 38, 39, and 40, Defendants have asserted either that documents responsive to the requests do not exist or that they are still in the process of trying to locate responsive documents. *See generally doc. 42 Ex. 6, doc. 55, doc. 86.* The Court notes that discovery in this matter closes on November 28, 2014. *Doc. 82.* The Court therefore orders Defendants, on or

before November 14, 2014 to produce to Defendants any documents responsive to these requests that they have found. If no such documents have been located, Defendants must file affidavit(s) with the Court signed by Defendants' custodian of records describing in sufficient detail the searches performed and affirming that no responsive documents have been found.

IT IS SO ORDERED.

/s/ Steven C. Yarbrough
STEVEN C. YARBROUGH
UNITED STATES MAGISTRATE JUDGE